

MEMORANDUM

FROM: Gray O'Dwyer
Assistant Attorney General

DATE: July 09, 2020

RE: Proposed Exempt Regulations - 9 Va. Admin. Code §§ 5-140 *et seq.*

Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.

It is my view that the Department of Environmental Quality ("Department") on behalf of the Virginia Air Pollution Control Board ("Board") has the authority to promulgate these proposed amendments to its regulations in 9 Va. Admin. Code §§ 5-140 *et seq.*

It is also my view that this regulation is exempted from the Virginia Administrative Process Act, §§ 2.2-4000 *et seq.*, by its enabling legislation. Chapter 1219 of the 2020 Acts of Assembly amended the Air Pollution Control Law to add a new Article 4, the Clean Energy and Community Flood Preparedness Act. Under § 10.1-1330 A, Clean Energy and Community Flood Preparedness, "[T]he provisions of this article shall be incorporated by the Department, without further action by the Board, into the final regulation adopted by the Board on April 19, 2019, and published in the Virginia Register on May 27, 2019. Such incorporation by the Department shall be exempt from the provisions of the Virginia Administrative Process Act (§ 2.2-4000 *et seq.*)."

The foregoing conclusion is my own. It does not constitute an opinion, formal or informal, of the Attorney General.